

- (1) Whether claimant suffered an accidental injury that arose out of and in the course of his employment with the respondent.
- (2) Whether claimant gave respondent timely notice of accident.
- (3) Whether claimant served respondent with a timely written claim for compensation.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the preliminary hearing record and considering the briefs of the parties, the Appeals Board finds as follows:

All three issues raised by the respondent are jurisdictional issues listed in K.S.A. 44-534a, as amended.

Claimant seeks medical treatment for bilateral upper extremity injuries that he alleges occurred as a result of his work activities while he was employed by the respondent. Claimant alleges a date of accident of April 22, 1996. Respondent admits claimant has bilateral upper extremity problems but argues that the problems stem from work-related injuries that occurred while claimant was employed by the respondent in 1988.

Claimant was treated for bilateral carpal tunnel syndrome related to repetitive work activities while he was working for the respondent from 1988 through 1990. In June 1990, claimant had a right carpal tunnel release and in August 1990, claimant had a left carpal tunnel release. Both surgeries were performed by William W. Bohn, M.D., at the Humana Hospital located in Overland Park, Kansas. Dr. Bohn returned claimant to work on September 4, 1990.

Following claimant's return to work, he settled his claim for workers compensation benefits for the carpal tunnel syndrome injuries in a settlement hearing held before a Special Administrative Law Judge on August 12, 1991. Claimant received a lump sum settlement payment in exchange for agreeing, among other things, to give up his right under the Workers Compensation Act for future medical treatment.

Respondent contends that the preliminary hearing record proves that claimant's present bilateral upper extremity symptoms are the same as claimant's symptoms were after his bilateral carpal tunnel syndrome releases. The respondent argues that claimant's current complaints are from the same work-related injuries that he settled on August 12, 1991. Therefore, the respondent argues it does not have an obligation to furnish medical treatment for claimant's current complaints.

The Administrative Law Judge found claimant proved that his repetitive work activities following his return to work after his carpal tunnel syndrome surgeries in 1990 caused further injury to his bilateral upper extremities. The Administrative Law Judge also found that claimant gave respondent proper notice of the accident as required by K.S.A. 44-520. Additionally, the Administrative Law Judge found that claimant satisfied the written claim statute found at K.S.A. 44-520a.

The claimant and respondent's representatives; Diana Palmer, administrative manager, and James Rogers, plant manager; testified in person before the Administrative Law Judge. Claimant's testimony was contradictory to the testimony of both of

respondent's representatives. The Appeals Board finds that the Administrative Law Judge had to conclude that claimant was more credible than the respondent's witnesses when he found in favor of the claimant on all issues. The Appeals Board finds some deference should be given to the Administrative Law Judge's conclusions in this case because he had the unique opportunity to assess the credibility of the witnesses from their in-person testimony. Therefore, the Appeals Board concludes that the Preliminary Decision of the Administrative Law Judge should be affirmed.

The Appeals Board also finds that the Preliminary Decision of the Administrative Law Judge sets out in detail findings of fact and conclusions of law and it is not necessary to repeat those in this Order. The Appeals Board adopts those findings and conclusions as its own as if specifically set forth herein. The Appeals Board notes that the Administrative Law Judge cited K.S.A. 44-551(c) on page 2 of his Decision when the appropriate statute should be K.S.A. 44-557(c).

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Preliminary Decision entered by Administrative Law Judge Robert H. Foerschler on August 18, 1997, should be, and is hereby, affirmed in all respects.

IT IS SO ORDERED.

Dated this ____ day of October 1997.

BOARD MEMBER

c: Luis Mata, Kansas City, KS
Bryce B. Moore, Overland Park, KS
Robert H. Foerschler, Administrative Law Judge
Philip S. Harness, Director